

TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates additional text, and ~~strikethrough~~ indicates deleted text.

Section 3000. Definitions.

Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.

Lockdown means the restriction of all inmates to their cells/dormitory beds encompassing no less than a Facility. True lockdowns are rare occasions, generally following very serious threats to institutional security and the safety of staff and inmates. The movement of any inmate to an assignment or resumption of any program would change the lockdown status of the program, returning the institution/facility to a diminished level of modified program or to normal program.

~~Lockdown means that a portion of the facility is affected by suspension of required programs or services, and inmates are not released except as determined by the facility administration on an individuals, case-by-case basis. As determined by the facility administration, under such circumstances only critical inmate workers in the affected housing units/sub-facilities will be permitted to attend to work assignments under escort, and all but essential functions are suspended in those affected housing units or subfacilities, e.g., yard, canteen draws, religious services, and visiting.~~

Modified Program means the suspension or restriction of inmate program activities and/or movement that impacts less than all programs or less than all inmates. A Modified Program may either occur independently in response to an incident or unusual occurrence or may occur as a facility transitions from a lockdown to regular programming. Imposed restrictions may fluctuate as circumstances dictate with the goal of resuming regular programming as soon as it is practical. Modified programming will last no longer than necessary to restore institutional safety and security or to investigate the triggering event, and shall not target a specific racial or ethnic group unless it is necessary and narrowly tailored to further a compelling government interest. For those inmates whose movement has been restricted, movement may be authorized on a case-by-case basis for essential or emergency services such a medical, dental, mental health or law library visits. The routine and/or temporary restrictions on inmate movement or yard activities, which do not last longer than 24 hours, are not considered a program modification.

Note: Authority cited: Sections 2717.3, 3000.03, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3550, 4570, 5009, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108,

10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and Madrid v. Cate (U.S.D.C. N.D. Cal. C90-3094 TEH).

3045.3. "S" Time.

Subsections 3045.3(a) through 3045.3(b) remain unchanged.

(b) "S" time shall be authorized only for the following:

Subsection 3045.3(b)(1) is amended to read:

(1) Institutional lockdown or modified program.

Subsections 3045.3(a)(b)(2) through 3045.3(b)(22) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 673, 1170, 2690, 2933, 2933.05, 2933.6 and 5054, Penal Code.

3123. Access to Law Libraries.

Subsections 3123(a) through 3123(c) remain unchanged.

(c) When unable to physically access the law library, an inmate may request access to legal material through delivery of those materials to the inmate by library staff. This process is referred to as law library paging. An inmate shall not be limited to law library paging for access to legal materials except under extraordinary circumstances including, but not limited to, the following:

Subsection 3123(c)(1) is amended to read:

(1) The inmate is directly under a prison lockdown or modified program.

Subsections 3123(c)(2) through 3123(c)(3) remain unchanged.

Subsection 3123(d) is amended to read:

(d) Inmates who are limited to law library paging due to a lockdown or modified program shall, whenever possible, have their law library access restored within 16 calendar days unless a high security risk continues to exist to prohibit physical law library access.

Subsections 3123(e) through 3123(f) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Gilmore v. Lynch, 319 F.Supp. 105 (N.D. Cal. 1970); Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986); Toussaint v. McCarthy, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; Toussaint v. Rowland, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; Zatko v. Rowland, 835 F.Supp. 1174 (N.D. Cal. 1993); Lewis v. Casey, 518 U.S. 343 (1996).

3134. General Mail Regulations

Subsections 3134(a) through 3134(c)(3) remain unchanged.

(c) Inspection of Incoming and Outgoing Packages will occur as follows:

Subsection 3134(c)(4) is amended to read:

(4) Delivery by staff of packages, special purchases, and all publications, shall be completed as soon as possible but not later than 15 calendar days, except during holiday seasons such as Christmas, Easter, and Thanksgiving, and during lockdowns or modified programs of affected inmates.

Subsections 3134(c)(5) through 3134(f) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; Procnier v. Martinez, 416 U.S. 396; and Bell v. Wolfish, 99 S. Ct. 1861.

3250.4. Termination of an Inmate Publication.

Section 3250.4 is amended to read:

The termination of any inmate publication for other than the temporary suspension of publication during a lockdown, modified program or other declared emergency shall require the director's approval.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3269.1 Integrated Housing.

Subsections 3269.1 through 3269.1(f) remain unchanged.

Subsection 3269.1(g) is amended to read:

(g) In the event that facility management determines that a temporary suspension of assignments within a unit to integrated beds is warranted, the Warden or designee shall request approval from their mission based Associate Director for a temporary suspension of integrated housing assignments consistent with the lockdown ~~and~~ or modified program. Regular housing assignment procedures shall be resumed in accordance with the Integrated Housing policy upon resolution of the incident.

Note: Authority cited: Section 5058, Penal Code. Reference: 5054, Penal Code; Johnson v. California (2005) 543 U.S. 499 [125 S. Ct. 1141], remand of Johnson v. California, (9th Cir. 2007) [Dock. No. CV 95-1192 CBM(BQR)].

3274. Inmate Count and Movement.

Subsections 3274(a) through 3274(b)(3)(C)3. remain unchanged.

Subsection 3274(c) is amended to read:

(c) Lockdown or Modified Program. Facility procedures governing the restriction of inmate movement during a lockdown or modified program shall be established and updated daily during any lockdown or modified program.

Subsection 3274(d) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2079 and 5054, Penal Code.

3383. State of Emergency.

Subsections 3383(a) through 3383(b) remain unchanged.

(b) Approval of the Secretary or Secretary's designee is required when:

Subsections 3383(b)(1) and 3383(b)(2) is amended to read:

(1) A lockdown or modified program of all housing units/sub-facilities within a facility's security perimeter is to exceed 24 hours.

(2) A lockdown or modified program of fewer than all housing units/sub-facilities within a facility's security perimeter is to exceed 72 hours.

Subsections 3383(b)(3) through 3383(d) remain unchanged.

Note: Authority cited: Section 5058, Penal Code; and Section 11152, Government Code. Reference: Section 5054, Penal Code

3482. Joint Venture Program Contracts

Subsections 3482(a) through 3482(a)(13)(A) remain unchanged.

(a)(13) Responsibilities of the department/facility, specifically those regarding:

Subsection 3482(a)(13)(B) is amended to read:

(B) Lockdowns, modified programs, fog lines and other circumstances under which inmate-employees may be restricted from work.

Subsections 3482(a)(13)(C) through 3482(d) remain unchanged.

Note: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.5, 2717.6, 2717.8, and 5054, Penal Code; Section 5, Article XIV of the State Constitution; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.